

DRAFT MINUTES HEARING OFFICER OCTOBER 2, 2018

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 4:30 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Dalton Guerra, Planner I
Blake Schimke, Planning Tech
Brittany Nelson, Administrative Assistant I

There were 0 interested citizens present at the study session.

- Staff and Hearing Officer discussed overview of the scheduled cases

REGULAR SESSION 5:00 PM

Present:

There were 10 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Vanessa MacDonald. They stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by October 16, 2018 Year at 3:00 PM, to the Community Development Department.

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1. The following was noted:

- **Agenda Item No. 1**

September 4, 2018 Hearing Officer Minutes

Vanessa MacDonald, Hearing Officer, stated that the September 4, 2018 Hearing Officer Minutes had been reviewed and were approved.

2. Request abatement of public nuisance items at the **WEBB PROPERTY (1)** located at 1011 W. 12th Street. The applicant is the City of Tempe (**CE184082**).

Andres Lara-Reyes, Code Inspector, gave the following presentation:

- In violation since July 7, 2018
- Over height grass and weeds in the front yard
- City has been dealing with the property for 5 years
- No response from owner

Ms. MacDonald said that she agrees with the assessment of the property.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 2.

No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

3. Request abatement of public nuisance items at the **WEBB PROPERTY (2)** located at 8630 S. Hazelton Lane. The applicant is the City of Tempe (**CE184123**).

Jack Scofield Jr, Code Inspector, gave the following presentation:

- Deteriorated landscape in front and rear yard
- Beehive in rear yard
- Citations have been mailed out to the property owner
- Failure to appear in court
- No response from owner

Ms. MacDonald said that she did not go in the backyard of the property, but the front yard did need some remediation.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 3.

No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

4. Request a Use Permit to allow a plasma donation center for **BIOLIFE PLASMA SERVICES**, located at 1245 West Elliot Road, Suite No. 115. The applicant is Dennis Newcombe of Beus Gilbert, PLLC. (**PL180205**)

Lee Jimenez, Senior Planner, gave the following presentation:

- BIOLIFE PLASMA SERVICES (PL180205) is proposing to operate a plasma donation center in approximately 14,000 square-feet of commercial space previously occupied by a major musical instrument retailer in Costco Plaza, located on the southeast corner of South Priest Drive and West Elliot Road in the PCC-2, Planned Commercial Center General District, and within the SWOD, Southwest Overlay District.
- The donation center will contain exam rooms, a donor area, a conference room, a lunch room, a large plasma storage walk-in freezer, and a supervised play area for children. The proposed daily hours of operation are from 8 a.m. to 6 p.m. Approximately 60 people will be employed by the center. Donations will be scheduled primarily by appointment using an on-line scheduling system; however, walk-ins will be allowed based on availability.
- The applicant voluntarily held a neighborhood meeting at 6pm on September 27th at the Quality Inn, located at 5121 East La Puente Avenue in Phoenix. The site was posted and notifications were mailed at least 15 days in advance of the meeting. The applicant's team and City staff attended the meeting; however, no one from the public attended.
- To date, no public input has been received by staff.
- Based on the information provided by the applicant, and the analysis provided in the staff report, staff supports approval of the requested use permit and believes the request meets the required approval criteria and will conform to the recommended conditions in the staff report.

Ms. MacDonald ask the applicant Mr. Gilbert to come up and speak.

Mr. Gilbert stated that he represents BioLife, that Lee has done a fabulous job of the presentation. He does not have anything else to add.

Mr. Gilbert stated that the staff report has each of the requirements for use permit, we agree with that analysis and unless there is opposition which they are not aware of he will not regail you with any further presentation.

Ms. MacDonald stated that her boiler plat question to all applicants is have you read and understand the conditions of approval in the staff report.

Mr. Gilbert stated that we have, and we agree.

Ms. MacDonald said that she wanted to commend the applicant for his outreach that the effort wasn't required but at the interest of notification and outreach by holding a neighborhood meeting is important and she wanted to acknowledge that.

Ms. MacDonald asked if there was a member of the public here that would like to speak on agenda number 4.

No show of hands or cards present.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180081) to allow a plasma donation center, **BIOLIFE PLASMA SERVICES**, located at 1245 West Elliot Road, Suite No. 115 subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
Any intensification or expansion of use shall require a new Use Permit.

5. Request a Variance to reduce the required 1,200 feet separation distance from another group home to 461 feet for **GENUINE CARE PEACEFUL LIVING II**, located at 524 West 16th Street. The applicant is Lea Tallo of Sonoran Sol Ventures, Inc. (PL180220)

Lee Jimenez, Senior Planner, gave the following presentation:

- Genuine Care Peaceful Living II is seeking a Variance to operate an assisted living group home on Lot 101 of the Campus Homes subdivision, located five lots east of South Roosevelt Street on the north side of West 16th Street in the R1-6, Single-Family Residential District.
- Pursuant to Section 3-409, Group Homes for Adult Care, Persons with Disabilities, and Child Shelter, of the City of Tempe Zoning & Development Code (ZDC), group homes shall not be located on a lot within 1,200 feet, measured by a straight line in any direction, from the lot line of another group home.
- In the City of Tempe, group homes are reviewed and approved by the Community Development Department for building code and land use compliance prior to the use commencing. The Planning Division and Building Safety Division provide roles in administering group home applications. Prospective operators must obtain written clearance from the Planning division by means of a completed Supplement Permit Application for Residential Care and Assisted Living Facilities Form. Such clearances are only issued to conforming sites with a ready-to-submit building permit application for required inspections and certificates of occupancy.
- The nearest group home from the subject site is located 462 feet to the southwest at 604 West 17th Place wherein zoning clearance was obtained from the Planning Division on March 1, 2018 and a certificate of occupancy was issued by the Building Safety Division on July 10, 2018.
- A neighborhood meeting was held on August 30, 2018 from 5:30 to 6:30 at Clark Park, located at 1730 south Roosevelt Street. Four neighbors and City staff attended. The Ms. Tallo and her team provided an overview of the application and answered questions about operations of a typical assisted living facility. Questions regarding the variance and hearing process were answered by staff. None of the neighbors acknowledged opposition or support at the meeting.
- To date, staff has received two (2) phone calls and one (1) email in opposition. The consensus is concerned about the compatibility of clustered group homes and bad precedence should the variance be granted.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff cannot support approval of the requested Variance. This request does not meet any of the required variance approval criteria.

Ms. MacDonald asked for clarification on when the other applicant zoning clearance was obtained in March.

Mr. Jimenez stated that the planning signed off on March 1, 2018 and the certificate of occupancy was issued July 10, 2018.

Ms. MacDonald invited the applicant up to speak.

Ms. Veronica L Manolio stated that they understand that this is a request for a variance. That a variance means it is a request out of the typical norm and that is understandable people have objections to the clustering of group homes that are not within the 1200-foot separation. The problem is that the City of Tempe study and evidence does not match that. This case would not be setting a persistence because the City of Tempe has multiple homes within 1200 square feet of one another as provided by the department of health services and the City zoning documents and evidence provided to us in events of this hearing.

Ms. MacDonald stated for her clarification the study that you are referencing is the staff report.

Ms. Manolio stated absolutely. She continued by saying one there was a mess up and that the report clearly details the request for variance that my clients believe there was a mistake made the date they made their applicant they were not told that there was already an existing group home, which is the one that is 461 feet away. What we had done was first a public records request which was made to the City earlier in September. And Mr. Schimke was the one that provided us with a list of group homes that exist in Tempe. The list that was given was 91 homes. Two days later Mr. Jimenez provided a list to my client saying that there were 63 homes in the City of Tempe. They then did a list through the department of health services which is any home that is licensed under Title 36 so it would qualify

under the Ordinance that we are here for the variance on. On that list there is a total of 154 residential homes in the City of Tempe. She is not sure why the list varies in amount. According to her findings there is a clear indication that the City of Tempe does not have all the information. She stated that according to the Department of Health Services there are 47 residential homes in the City of Tempe and 70 group homes both of those would be classified under the statue outside of the 1200-foot separation. City of Tempe list show 37 homes that are licensed with the City of Tempe but are not licensed with the Department of Health Services and/or do not have any registration with the Arizona Corporation Commission they are not licensed business here in the State. There is already variances from what the statue dictates they are just not being monitored. The statics are that in the City of Tempe right now there are 73 homes that already violate the separation distance of 1200 feet. She has taken the information that was provided by the City of Tempe and show the cross over with any homes that are set with a 1200 feet separation as the statue dictates and mapped them out. The first list that she provided are the all the homes with the Department of Health. The second list show the additional 70 that are group home providers. Then the list that Mr. Schimke provided of 91 homes that the City is aware of. The next are the 63 that Mr. Jimenez provided. Of the information provided 73 of them are all within the separation. This is to show that there are already existing cluster. There are two group homes up north that the City of Tempe owns, and they are 275 feet from one another. The City of Tempe is already violating the distance requirement. She would like to understand why that can be if a variance was never granted.

Ms. MacDonald wanted clarification from Steve of when was the separation distance enacted into the zoning and development code.

Mr. Steve Abrahamson stated date uncertain. And he will work on getting an answer for the question.

Ms. MacDonald stated that what she is trying to get at is that often there are business that are existing while an ordinance is updated or enacted and those become legal non-confirming we don't make them shut down we don't make them move. We say that you are not confirming to our present code, but you are still operating legally. But the question is that we don't know when the code was enacted, nor do we know when the uses where established to judge them relative to that ordinance.

Ms. Manolio stated that it was enacted in 2011. The homes that they were looking at had operational licenses from the Department of Health Services where issued after 2011. Therefor if there was an issue with nonconformity it has to be that someone didn't apply, or the City does not have a way of verifying that someone doesn't verify. She did run the licenses through the department of health services and the issue date was post 2011.

Ms. MacDonald asked how many of these would be pre-2011.

Ms. Manolio stated none that I am aware of. Again, she said point was if there was something operation under a different name before 2011 and after 2011 they had a name change it would only show the new name looking at public data. Be that as it may there are a fair amount of these that are in violation of the ordinance as it is today. What is important here is understanding the specific property at issue her client's specific property. The position of the City has been that the prior applicant came in and requested a use permit on that property on March 1, 2018.

Ms. MacDonald clarified that prior applicant you mean the existing group home that you are seeking to get your variance from.

Ms. Manolio stated correct. And by all accounts that couldn't have happened because the applicant was not the property owner they did not own the property on March 1, 2018. Something happened that it was not checked and verified with the City or the applicant falsified the documents. The applicant did not own the property till March 5 and it was not the applicant that owned the property but an entity.

Ms. MacDonald asked if she looked at the Corporation Commissions website to see if the applicant was a signer on the LLC.

Ms. Manolio stated that she did, and she is. But that not even the entity owned the property on March 1. They didn't close on the property till March 5. So, when she submitted the applicant she was not the property owner. And

according to the City of Tempe documents they do not show her as an owner.

Ms. MacDonald acknowledge Mr. Abrahamson.

Mr. Abrahamson stated that he contacted the City of Tempe Planning Deputy Director Ryan Levesque about when the separation ordinance came into effect and he said that it was sometime prior to Ordinance 808 which was 2005 or 2006 or earlier. He also addressed council concern with the ownership. You can be an individual leasing a property and still apply for or receive the separation requirements.

Ms. MacDonald clarified that it is unlike a zoning applicant or rezoning planning amendment on a property where you require a Prop 207 where it has the actual signature of the property owner. A lot of us can go in and apply for things on property that we don't own now.

Ms. Manolio stated that there are two things that she wanted to address which is that she appreciated that the current ordinance was enacted back in 2005 or earlier because that means that any of the properties that have been violated would have been existing even earlier than 2011. But anything from 2005 and on are in violation of the separation.

Mr. Abrahamson stated that the City of Tempe does not recognize homes for the developmentally disabled as part of group homes. It doesn't meet the definition of group homes they can be anywhere that occupancy concerns are legally allowed to go into. The reasoning for that is Tempe would be in violation of the American Disability Act if the City were to limit their separation. So, there are many discrepancies in that case.

Ms. Manolio stated that on the application it specifies that someone is the Owner. She gets the agreement that someone is in escrow, so they can apply the problem is that you are not an owner when you are representing an owner rather it is going to close in five days or not is irrelevant when the actual application says I am signing as the owner or the agent or authorized agent. And you can't be an authorized agent if the owner of the property has not given you authority. There is nothing to indicate that the actual owner which at the time was a Salt River Equity based out of Texas.

Ms. MacDonald Clarified that there was no recorded document to show.

Ms. Manolio continued by saying correct nothing that she received in the file. Could be a reason, sure, but it is very hard when you look at a property and say that they applied on March 1 but if that was a true statement why when her client walked in in April did the City not know that this existed because the City did not inform that the home did not exist and that there was not any violations therefore you are free to start building which is what happened. The next important issue is that those that violate the separation requirements when the application was made on March 1 there was a property called Mirror Home Group 4 that was 576 feet away. So, the application was approved on March 1 within the violations of the separation violation under Title 36 of the Arizona State statutes which created an already existing error. The point being that there is ample reason for a variance in this case. The criteria that should be met to decide should a variance be granted is should this be treated as other similarly situated homes and is it going to be disruptive of the master plan of Tempe if the ordinance is varied in this instance. When you have evidence of 73 other homes that are already varied from the ordinance there is no harm created. By issuing a variance in this instance which was artfully said earlier if my client chose to change and make this a developmentally disabled group home it would have to be granted so that the City does not violate the ADA guidelines. What is truly happening here is that all the evidence that already exist in the City of Tempe showing the variance. It is understandable that other residents are upset that there are going to be too many group homes in their area but that is already happening. Which is why she would like for the variance to be granted.

Ms. MacDonald stated that she did admit that there is a gap between the facilities that are registered with the City of Tempe versus those that are licensed through the State. She believes that some operators don't understand that they must get their City license, and if they are not remodeling the home they wouldn't know that they need to contact the City and they just obtain the State License.

Ms. MacDonald clarified the timeline of events from Ms. Manolio clients. The first date on the timeline that was given was February 1 renovations began at the property unpermitted. March 1 is when the other group home applied and

turned in their supplemental application they signed it and turned it in to Mr. Jimenez and they began the process in which it was available to them. Meanwhile inspection is taking place at Ms. Manolio clients property and there are some plans begin drawn to get through the permit. It does show that there are some back and forth with the Building Department because they need to redline the permits rarely does the Building Department take in a set of plans and stamp them approved there is anticipation that there is going to be some back and forth in the plan review process. Ms. Manolio client was given their form to establish their use. While all this time it is going on till April nowhere does the plans say that there is going to be anything other than a straight residential remodel. So, it is not known by the City that this is the development of a group home it was just being presented as a residential remodel. A representative of the property owner was given a form and same supplemental application in May and did not do anything with the form. Meanwhile still improving the property. On July 2 the other group home established there use and building permits that they needed, and the use was established. It wasn't till August that Ms. Manolio client went back in and informed the City that they are done with the renovations and they are ready for the license and was informed that a use has already been established in front of you.

Ms. MacDonald clarified that her understand was that Ms. Manolio client was there to seek understanding to why they were not informed that there was another applicant already and/or that their place in line was not maintained.

Ms. Manolio stated that she disagrees with some of the information however the timing is correct. The online portal for the City says that this other applicant applied on March 1 the project value is \$500 and that they did not get permitted till July so it took them multiple months to get applied and approved to permit for \$500 changes doesn't make sense in light of the fact that her client did go to the City of Tempe in April and asked what would be needed to change this into a group home. A former employee of the City of Tempe named Cindy told her client to fill out the application, he filled out the application then she then took him over to meet with a gentleman named Gary, who also worked for the City of Tempe, and walked him over and told him what to do. The client did fill out the applicant that day he did not have any ideal that it needed to be signed and entered. Which lead the client to believe that they were locked in they meet with a meeting planner that day in April. In May her client comes back and talks again to the City planner to find out about the separation requirements. That is when they were told that someone else was locked into place in between. If that March 1 document had been filed and was on file, then they would have never been told that yes you can go ahead with your plans when he first went in April.

Ms. MacDonald clarified that Ms. Manolio client was given the application on May 3. He told Cindy to lock them in but there is no City mechanism that can lock someone in without doing the paperwork. August 3 is when Ms. Manolio client went back to the City and informed that he had the sprinklers and alarms ready for inspection. That is when he was told on August 3 that that on July 10 there was another property established.

Ms. Manolio declared that the City application is the way to "Lock in ".

Ms. MacDonald stated that you would have had to give it to someone. However, her understanding is that Ms. Manolio client took it with him home and/or filed it away.

Ms. Manolio stated that is where the disagreement comes in because Ms. Manolio client stated that he handed it to Cindy and she informed him that she will just walk him over to Gary. The City failed to say that we need to sign it and/or file this.

Ms. MacDonald stated that on August 8 Ms. Manolio client called Mr. Angelo and informed him that he still has the supplemental application in his possession because he never turned it in.

Ms. Manolio repeated that no one ever told him to turn it in. Ms. Manolio client stated that he handed it to Cindy and she informed him that she will just walk him over to Gary. They would not have spent \$2500 on outfitting the house if they were not in the belief that they turned the paperwork into Cindy.

Ms. MacDonald clarified that there is no paper trail.

Ms. Manolio declares that it is the City fault.

Ms. MacDonald questioned that it is the cities fault that Ms. Manolio client took the application home and never turned it in.

Ms. Manolio repeated that no one ever asked him to turn it in. Ms. Manolio client stated that her client sat there filled it out and then handed it to Cindy and she informed him that she will just walk him over to Gary. They never told him that there was another application was on file and whoever gets done first is going to be approved.

Ms. Manolio believes that even if he would have filled it out that day on May 3 and handed it in by the Cities evidence someone was already on file as of March 1. If they had told her client that someone was on file, the client would have saved this significant expense of outfitting the property with the sprinklers and alarms it would not have been done. Which leads her to believe that either that March 1 application didn't exist or there was no mechanism for the City to say that someone was already ahead of you. And at that time there were two properties within the separation violations. No one ever gave Ms. Manolio client direct information. She understands that her client should have known but that is what you go to the City for is to ask for help because they are not sure what do. Her client asked several employees why they never informed her of this and each one always had a different answer no one really answered the questions for her client. Which left her client with an understanding that the only thing to do is to get a variance. She is aware that her client made errors they should have turned in the application. However, her clients are waiting for the City to sign off on everything and the City stated that they will not approve the improvements till the issue at hand is resolved. So, the house is sitting vacant and can be occupied as a single-family resident till this is resolved and that is not the correct thing to do. The variance should be granted because of the mistakes on both sides.

Ms. MacDonald invited the public up to speak at this time.

Ms. Esther Myers stated that all her questions are for the City of Tempe Staff. Which is was one of the staff aware that the applicant wanted to turn the home into a group home.

Mr. Jimenez stated that the first knowledge of the group home was May 3 when they inquired about the site and the separation requirements.

Ms. Myers clarified that on May 3 was first time.

Mr. Jimenez stated that this was all a verbal conversation they never provided or submitted any permits indicating that this was a purposed assistant living facility.

Ms. Myers questioned on May 3 why they would have to fill out a form if there was a group home already located close the site.

Mr. Jimenez stated that that site was a pending site it was not final until the certificate of occupancy was issued.

Ms. Myers questioned if they were informed of that.

Mr. Jimenez stated that Cindy would not have known this information that anything needing a signature would be brought to my attention and he would cross referenced that with his records.

Ms. Myers questioned if Cindy not coming to him about this application was a mistake.

Mr. Jimenez stated that Cindy would not have to come to him if she was not authorizing it or filling it out giving him authorization on his zoning clearance.

Ms. Myers stated that her issue is with the process if the customer comes in someone should inform them that there is a group home, why fill out the form.

Ms. MacDonald stated that there are applicants that come in and apply for things and for any number of reasons not complete the work that they applied for often it is because of lending issues, personal circumstances. So, there can

be an application pending but till there is a Certificate of Occupancy there truly was not an established group home there was an idea of a group home which they let City staff know they would like to operate but they had not established the use on the property. Not every application that is filled out with the City of Tempe end up with a Certificate of Occupancy.

Ms. Myers questioned that according to Ms. Manolio there was already another group home established in that area.

Mr. Jimenez stated that at first glance at the list 70 of the sites are for the individuals with mental disability which the City Zoning code does not apply to.

Ms. MacDonald informed her that as Mr. Abrahamson stated earlier City of Tempe is not allowed to deny them the right because of ADA regulations.

Ms. Myers stated that if she was to come into the City of Tempe she does not know how things are run when the applicant came in did they state that they wanted to start a group home on May 1.

Mr. Jimenez stated that the City was aware that they wanted to, but they did not process the required paperwork and permits to start the process for operating a group home.

Ms. Myers stated what was the form for.

Mr. Jimenez stated it was the supplemental form that building safety is required to ask for when they process a building permit for a required inspection to option the Certificate of Occupancy for group home.

Ms. Myers questioned if at that time did anyone look up if there were any group homes in the area so that they would not have to go through the process.

Mr. Jimenez stated that we get verbal inquires all the time on group homes and that nothing is locked in till they submit a building application with the supplement form that allows them to go through the building process of an assist living facility.

Ms. Myers questioned if they received a permit to make the changes or did they make the changes without getting the permit.

Mr. Jimenez stated that up till April it was a renovation project. It wasn't till August that they submitted for sprinklers and that is when building safety informed them that they need to speak to planning because a typical residence does not install sprinklers unless they are operating some type of group home facility that requires that type of alarm system and sprinkler system which is when they were informed that there is a group home already operation in less than 1200 feet from the property.

Ms. Myers questioned if the applicant was informed they need to turn to the application.

Mr. Jimenez stated that there is instruction on the form as well how the process goes.

Ms. Myers repeated questioned if the applicant was informed they need to turn to the application.

Mr. Jimenez stated he could not answer the question because Cindy was there, and he is not aware of what she informed him at that time.

Ms. MacDonald invited Freda Rothaermel to up to speak.

Ms. Rothaermel stated she lives behind the house and that her father was a in a senior citizen living home in Mesa, so she understands the needs for these places and it would have been great to have a home close by. She doesn't have a problem with them being close they are a neighborhood that has a lot of high occupancy rentals, unofficial fraternity houses. Her concern for the home is that is does seem small for 8-10 occupants but if it is per the health code then she does not have a comment on that. But it does have a small drive way that has been done on the

exterior of the house. But for assistant living they would be good neighbors.

Ms. MacDonald invited Nestor Cifuentes to up to speak.

Nestor Cifuentes stated that he can see both places from his house. He spoke to the other owner and she informed him of the channels that they went to get the house. He feels that the current applicant should not get the approval because they did not do the correct process. Also, found out that the property was an investment and then they found out that the home was bigger than planned and that is what caused them to try and turn the home into an assistant living facility. He understands that everyone is getting older and need places to stay. And that the number of people, 10, living in the home is rather large.

Ms. MacDonald invited Chet Myers up to speak.

Mr. Myers stated that he urges this to not be approve and that City looks at the processes. He asked what the defining difference between a disable home and a group home.

Mr. Abrahamson stated that usually developmentally disabled involves youth and adults that have cognition issues, and/or psychological issues learning. Mainly issues that deal with people who meet ADA requirements. They can be physically handicapped it is like a group home setting, but it deals with a different group of individuals. The group homes are normally the elder or individual that cannot take care of themselves as they once did.

Mr. Myers asked if individuals would say that they are using the property for the mental disabled, so they wouldn't have to get separation variance.

Mr. Abrahamson stated that he cannot speak on that matter.

Ms. MacDonald invited Karen Adams up to speak.

Ms. Adams stated that she has aging mother and she is not against group homes however she feels that 8-10 is a large number for the homes in her neighborhood because the houses are quite small. And this is a second time in three years that her block was asked to approve a request after the fact. First time they were asked was because someone built the home illegally and then the request got approved. She feels that twice in 3 years is really changing the nature of the neighborhood in terms of it's a single family residential neighborhood and the density has changed. And it is not because of the residence but the City for the way that they handle things.

Ms. MacDonald invited up Jerry Maloney to speak.

Mr. Maloney stated that his concern is that it changes the nature of the neighborhood. The density and the Emergency vehicle response. Everyone moved into the neighborhood because they wanted the small single-family housing and it is getting cannibalized by one thing or another.

Ms. MacDonald invited Ms. Manolio back up to address any of the issues that the citizens have.

Ms. Manolio stated that she would like to state for the record that Mr. Jimenez sated it is the Building and Safety Department is required to ask for the forms. Ms. Manolio client stated that her client sat there filled it out and then handed it to Cindy and she informed him that she will just walk him over to Gary. The discussion tonight was that Building and Safety should have asked for that form. Her clients where told one bring it back when you want to do permitting, it doesn't matter if you want to do a group home, a residential home, a developmental disability home our requirements are 1200 square feet. If that were true, there was already development disability home 700 square feet away. And there was already another application

Ms. MacDonald stated that the development disability home needs to be disregard because of the ADA regulations.

Ms. Manolio stated that the problem with that is that her client asked if this could be a development disability home and she was told no you must meet the separation. However, that violates what was told earlier of complying with

ADA. If that is the case, then this could be a disability home and there wouldn't be any issues because that is the law the ADA protects it. This issue would have been moved months ago. City of Tempe staff not giving correct information. Which is leading to big confusion because they asked can you make this a development disability home.

Mr. Abrahamson stated that this is the first time that he has heard that this was going to a development disability home and he does want to make it clear that development disability home is not a part of the separation requirement and that the City cannot say that she cannot open the home as a development disable home because of the ADA. Furthermore, the application does state that this is an assist living home and not a development disable home.

Ms. MacDonald clarified that it is on the record that Ms. Manolio client can open a development disability home. Ms. Manolio stated that she disagrees because her client was told by Dalton that she could not open the development disability home and if they would have known they could they would have avoided all this headache. And that even if they were to open a disability home the same issues that the neighbors voiced still could happen, but they can't stop a development disability home. And they still ask that a variance be granted and if not then they will be changing the assist living to a disability home.

Ms. Leah Tallo stated the date that she came in on August 3 and they were told about the separation requirements. She asked could she put any type of other group home in here and she was told no which is why she called the City and set up a meeting on August 8.

Ms. Manolio stated that there needs to be training so that the citizens are getting the correct information.

Ms. MacDonald invited up Mr. Evan Hartfield to speak.

Mr. Hartfield stated that he is opposed to the home because of the traffic is parking. He wanted to know if they did turn the home into a development disable home what would be the process.

Ms. MacDonald stated that it's a use allowed by right in this Zoning district and there is a State license process but at the City level there is not anything.

Mr. Jimenez stated that is correct if they have the number of occupancy they are seeking, and they get the license from the State they can operate.

Ms. MacDonald stated that clearly there were miscommunication and there were errors on both sides of the table. She believes that Ms. Manolio did receive misinformation from different staff members and every can acknowledge that we are human, and everyone makes mistakes. And there are gaps in the process which can be addressed. And the neighbors feel put upon to because of the impact that the homes have had in their area. Never the less she is here to look at a variance application. She is being asked to reduce a development standard. And there is Criteria that goes along with that. Two of them go hand in hand. The highest hurdle that you must achieve a variance is that you have to demonstrate a hardship and that is was not self-imposed.

Ms. MacDonald referred to the Zoning and Development Code Section 6-309 D. Variance Approval Criteria (*in italics*) as follows:

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;*
Ms. MacDonald doesn't believe that this property has any special circumstance.
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;*
Ms. MacDonald does not believe the strict application of the code will deprive this property of privileges enjoyed by properties in the same zoning district.
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;*
Ms. MacDonald stated that she was not satisfied that this criteria had been met.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner;*
Ms. MacDonald stated that the special circumstances were self-imposed.

DECISION:

Ms. MacDonald denied the Variance contained in (PL180220) to reduce the required 1,200 feet separation distance from another group home to 461 feet. **GENUINE CARE PEACEFUL LIVING II**, located at 524 West 16th Street.

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6. Request a Use Permit to allow parking in the required front yard building setback for the **GINGERICH RESIDENCE**, located at 501 West 16th Street. The applicant is Matt Johnson. **(PL180241)**

Dalton Guerra, Planner I, gave the following presentation:

- The subject property is located on lot 116 of the Campus Homes Subdivision, north of West Broadway Road and west of South Mill Avenue.
- The applicant is proposing to relocate the required off-street parking to the front yard setback as a result of the garage or carport being enclosed by a previous owner.
- To date, staff has not received any public input.
- Based on the information provided by the applicant and the analysis provided in the staff report, staff supports this request and believes that the application meets the required criteria and will conform to the conditions provided in the staff report.

Ms. Macdonald called up the property owner Mr. Matthew Johnson.

Ms. MacDonald clarified that the owner bought a house that the previous owner had a garage that was enclosed without a building permit. Which means the property owner cannot park in the garage anymore and he is required to come and get a use permit to park in the front yard setback and need a use permit to do so.

Mr. Johnson stated that is correct he bought the home in 2004 it is a screened in porch and a laundry room at one time. He is unaware of when it was converted but he is looking to remodel the home to make it is his personal place of residency.

Ms. MacDonald informed him that he will get a building permit. The use permit is specific to the plans that Mr. Johnson provided. If there are any changes he would need to come back to the City and get a permit for any

changes. Any State, County, licenses or clearance he will need to obtain. Any complaints that arise will require a new use permit.

Mr. Johnson stated that he agrees and will comply with that.

Ms. MacDonald invited Ms. Freda Rothermel up to speak.

Ms. Rothermel wanted clarification if Mr. Johnson was adding onto the drive way. She implied that there is an existing driveway already on the property.

Mr. Guerra stated that no they are not expanding the driveway they are requesting to park in the required set back once the garage or car port is enclosed on the property the off-street parking must be moved elsewhere on the property.

Ms. Rothermel asked does driveway end at the front of house.

Ms. MacDonald clarified that it is in regard to the code. That at her house a single-family home typically requires 2 parking spaces. Her parking spaces are in her garage and the guest parking is on the street or the driveway. However, if she encloses her garage then it removes her area for the required parking out into the driveway. And most cars are 20 feet in length so that would mean that the car is encroaching to the setback. There is an invisible line that goes across everyone's property line that we are not aware of because we drive up into our driveway and park but when you remove the garage you need to notify the City that you are going to be parking in the front yard setback.

Ms. Rothermel stated that it was confusing and thanked Ms. MacDonald for explaining.

Ms. MacDonald invited Ms. Karen Adams up to speak.

Ms. Adams stated that Mr. Johnson is a landlord and she wanted to make sure that he is the one that is going to live there and that this request is to park in the drive way.

Ms. MacDonald stated essentially yes, he is not asking on the street.

Ms. Adams interrupted Ms. MacDonald by saying he has plenty of room to park in the back by the way his yard is wider than others.

Ms. MacDonald stated yes his home is oddly configured which kind of complicates things but 20 feet back from his property line is called the building set back line so if you go out to your property line and measure 20 feet back that is the setback line because he is enclose the area and can no longer park in the area he is asking that he be allowed to park within that set back.

Mr. Abrahamson stated that Mr. Johnson did not do this he is rectifying the situation. Part of the rationale is to prevent vehicular clutter in the front yard to make the neighborhood look better.

Ms. Adams stated that she understands that which is why she was asking because Mr. Johnson has not been the best at doing that in the neighborhood. If he is going to live there would help prevent to not clutter.

Ms. MacDonald stated that truth be told if we denied the application to park in his own driveway he can park in the street. If they were private streets and they had a HOA then that would be different, but it is better for the neighborhood if he parks in the driveway. To Ms. Adams point of rather he lives there or not is not a factor in her decision.

Ms. MacDonald invited Mr. Daniel Cifuentes up to speak

Mr. Cifuentes asked if this would allow him to build a structure in that set back and would he be allowed to build a garage or covered parking.

Ms. MacDonald stated that application is just for him to park there. And the stipulation that she asked him to approve up condition #5 that states any intensification or expansion of use shall require a new Use Permit. Includes the type of expansion that Mr. Cifuentes is talking about.

Mr. Guerra stated that Mr. Johnson inquired about a carport being built. However, he can do that per the R1-6 zoning rights which is 15 feet by right.

Ms. MacDonald asked if that would be considered an intensification or expansion.

Mr. Abrahamson stated if he would be able to build that carport without encroaching into the front yard setback then that would be legal for anyone to do. Which is rather doubtful unless he had one heck of a good structural engineer that could build a carport he would need a use permit or variance to build.

Ms. MacDonald stated that if you look at his property line it goes just up to where his expansion already is.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180090) to allow parking in the required front yard building setback, **GINGERICH RESIDENCE**, located at 501 West 16th Street subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. Any intensification or expansion of use shall require a new Use Permit.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- The Use Permit is valid for GINGERICH RESIDENCE and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning> or purchase from Development Services.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

7. Request a Use Permit to allow a 55 feet high wireless telecommunication facility (monopalm) for **VERIZON PHO FREEWAY COMMERCE CENTER**, located at 1350 West Broadway Road. The applicant is Michael J. Campbell of Campbell A&Z, LLC. **(PL180246)**

Blake Schimke, Planning Technician, gave the following presentation:

- Good Evening Hearing officer MacDonald, Blake Schimke, Planning Technician for the City of Tempe Planning Division.
- Michael Campbell of Campbell A&Z is proposing a new stealth wireless telecommunication facility on the

northeast corner of West Broadway Road and South Priest drive in the CSS, Commercial Shopping & Services District.

- The facility will be concealed as a palm tree, standing 55 feet tall, and provide a total of twelve (12) antennas on three (3) sectors, four (4) per sector, at the 46-foot center of radiation height. The equipment enclosure will be constructed of CMU and painted to match the on-site building/structures.
- Verizon PHO Freeway Commerce Center will be the first monopalm facility on this property.
- To date, staff has not input on use permit request.
- Based on the information provided by the applicant, and the analysis provided in the staff report, staff supports this request and believes the application meets the required criteria and will conform to the conditions provided in the staff report.

Mr. Schimke provided photos of what the area would look like if they were to place the towers versus what is already on the street. And informed that they blend in to the background.

Ms. MacDonald stated that she agrees the existing palm trees are tall and will provide a cover. That there is enough visual clutter on that street with all the different species of trees and street poles that it blinds in well.

Ms. MacDonald invited Micheal J Campbell up to speak.

Mr. Campbell stated that staff represented the case very well today and he has no additional questions. And that his client reviewed the conditions and approve them.

Ms. MacDonald asked if anyone would like to speak on agenda item #7.

No show of hands or cards.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180087) to allow a vocational school (holistic healthcare), **VERIZON PHO FREEWAY COMMERCE CENTER**, located at 1350 West Broadway Road subject to the assigned Conditions of Approval as follows:

CONDITION(S) OF APPROVAL:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. The monopalm shall be no greater than fifty-five (55'-0") in height to top of structure (frond).
5. A weather resistant emergency contact information sign shall be posted on the equipment enclosure and shall be visible to the public.
6. The pole structure shall be clad with faux bark from the base to the height of the first palm frond.
7. All antennae and equipment shall be finished to match palm fronds or faux bark.
8. All cables shall be concealed within the pole structure.
9. No climbing pegs are permitted on the pole structure.
10. The proposed equipment enclosure shall be constructed of similar material and color to match the existing building. Details to be approved during Building Safety Plan Review.

ANNOUNCEMENTS

- Vanessa MacDonald noted that the next Hearing Officer public hearing is scheduled for Tuesday October 16, 2018 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 6:42 PM.

Prepared by: Brittainy Nelson
Reviewed by:

Steve Abrahamson, Principal Planner
For Vanessa MacDonald, Hearing Officer

SA: bn